
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

JAMES DAVID NAFUS,

Plaintiff,

vs.

INTOWN SUITES,

Defendants.

Case No. 2:08-CV-847 DB

REPORT AND RECOMMENDATION

Judge Dee Benson

Magistrate Judge Brooke C. Wells

District Judge Dee Benson referred this matter to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B).¹

Plaintiff James David Nafus filed his complaint in this case on November 3, 2008.² On May 6, 2009, the court issued an order to show cause why the case should not be dismissed because more than 120 days had passed since the filing of Plaintiff's complaint³ and Plaintiff has failed to provide the court with the requisite proof of service to demonstrate that the summons and complaint had been served on the Defendant.⁴ That order directed Plaintiff to respond to the court within fifteen (15) days and inform the court why service has not been made upon Defendant.⁵ That order also warned Plaintiff that failing to so respond would result in the court dismissing his action on its own motion.⁶ As of the date of this Report and Recommendation, the fifteen-day period

¹ Docket no. 6.

² Docket no. 3.

³ See Fed.R.Civ.P. 4(m) (2008).

⁴ See *id.* 4(l).

⁵ See Order dated May 6, 2009.

⁶ See *id.*

referenced in the court's order has expired and the court has not received any response from Plaintiff.

In relevant part, Rule 4(m) provides that

[i]f a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time.⁷

As noted by the record, more than 120 days have passed since the filing of Plaintiff's complaint and Plaintiff has not provided the court with the requisite proof of service to show that the summons and complaint have been served on the Defendant.⁸ The court's order to show cause has provided Plaintiff with notice of this deficiency as required by Rule 4(m) and Plaintiff has failed to respond to that order.

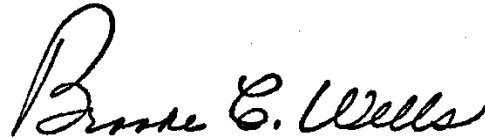
Accordingly, pursuant to Rule 4(m), **IT IS HEREBY RECOMMENDED** that this case be dismissed, without prejudice.

Copies of the foregoing report and recommendation are being mailed to all parties who are hereby notified of their right to object. Any objection must be filed within ten days after receiving this Report and Recommendation. Failure to object may constitute a waiver of objections upon subsequent review.

⁷ Fed.R.Civ.P. 4(m).

⁸ See *id.* 4(l).

DATED this 22nd day of May, 2009.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, looping initial "B".

Brooke C. Wells
United States Magistrate Judge